

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER
DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)	
)	
SNOHOMISH SCHOOL DISTRICT)	FILE NO. 05 -118947
)	
Conditional use permit, height variance and landscape)	
modification for the construction of new Elementary)	
School No.10 and new High School No. 2)	

DATE OF DECISION: November 1, 2005

DECISION (SUMMARY): The conditional use permit applications and related height variances and landscape modifications are **CONDITIONALLY APPROVED with preconditions.**

BASIC INFORMATION

LOCATION: The subject property is located approximately one mile west of Highway 9, along Cathcart Way at the intersection of Cathcart Way and 74th Avenue SE in the vicinity of the now-closed Cathcart landfill.

ACREAGE: 63 acres

ZONING: Rural Conservation (RC)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation:	Other Land Uses
Pre-GMA Subarea Plan:	Cathcart – Maltby – Clearview
Subarea Plan Designation:	Public Facilities / Possible Public Facilities

UTILITIES:

Water/Sewer: Silver Lake Water and Sewer District

SCHOOL DISTRICT: Snohomish

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approval subject to preconditions and conditions

Public Works: Approval subject to preconditions and conditions

INTRODUCTION

The applicant filed the Master Application on May 3, 2005. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 23, 24 and 25)

A SEPA determination was made on May 20, 2005. (Exhibit 20) No appeal was filed.

The Examiner held an open record hearing on October 20, 2005, the 105th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered.

PUBLIC HEARING

The public hearing commenced on October 20, 2005 at 9:02 a.m.

1. The Examiner announced that he had read the PDS staff report, reviewed the file and viewed the area and therefore had a general idea of the particular request involved.
2. The applicant, Snohomish School District, was represented by Scott Hodgins. Snohomish County was represented by Tom Barnett of the Department of Planning and Development Services and by Norm Stone of the Department of Public Works. No member of the public participated by document or by testimony.
3. The hearing concluded at 9.33 a.m.

NOTE: The above information summarizes the information submitted to the Examiner at the hearing. An electronic recording of this hearing is available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

Based on all of the evidence of record, the following findings of fact are entered.

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner is hereby made a part of this file as if set forth in full herein.

2. The PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Policy Act (SEPA). That staff report is hereby adopted by the Examiner as if set forth in full herein.
3. No letters were received in opposition to the request nor did anyone testify in opposition.
4. The requests for the 63-acre subject site are for (1) a single conditional use permit to construct an elementary school and a high school, (2) a variance to construct portions of the high school buildings to a height of 65 feet, which exceeds the 45-foot height limit for schools set by the underlying zoning and (3) a modification to the landscaping code in view of the steep sloped terrain which renders the normally required landscaping of scant value.
5. The new high school will house 1,500 students in grades 9 through 12 in a building of approximately 235,000 square feet on three stories, with some small independent buildings. The new elementary school will house 700 students in a building of approximately 73,000 square feet on two stories. At the high school a 10-12 classroom future addition is planned for south of the classroom wing. Space is reserved at both schools for future additions and portables. The project is fully described in the Updated Description of Proposal (Exhibit 3).
6. This conditional use permit application was complete on January 13, 2005, and has been evaluated for consistency with the version of the GMA Comprehensive Plan which was in effect as of the date of completeness of this application. The subject property is zoned RC. The proposed use is allowed as a conditional use in the RC zone. The existing regulations in regard to Conditional Use Permits is found in SCC 30.42C.100, Conditional and Special Use Permits - Conditions for Granting. This project is submitted under SCC 30.42C and has been found to be in compliance with SCC 30.42.C.100. The subject property lies within the Cathcart – Maltby - Clearview Comprehensive Planning Area, which plan became effective in March 1987. The subject property and vicinity are designated Public Facilities/Possible Public Facilities on the plan map. The district has provided the Environmental Noise Analysis, prepared by SSA Acoustics (Exhibit 27). The report finds that future noise levels will be at or below the levels required by Chapter 10.01. No special noise control measures are recommended.
7. The applicant has requested a landscaping modification, which is described in Exhibit 3. The standard requirement of 20 foot wide Type A buffer for a conditional use permit would not serve this area well. The landscaping proposed along Cathcart Way exceeds this standard. Providing perimeter landscaping adjacent to the soon-to-be-constructed Public Works Cathcart Maintenance Center would be of limited value. The adjacent property owned by Snohomish County does not currently have a planned use. When a decision on that use is made, it will be made knowing the existing configuration of the schools and their landscaping, therefore compatibility can be ensured without the 20 foot wide buffer. The site will be extensively landscaped, and the wetlands and buffers will provide additional green area.

Section 30.25.040 provides the approval criteria for landscaping modifications:

The site is large (63 acres) and therefore it is relatively easy to provide landscaping that does not conform to the prescriptive portions of the landscaping code but does conform to the intent.

8. The proposed schools are an allowed conditional use in the RC zone, the zoning on the subject property at the time the application was determined to be complete.

Chapter 30.42C SCC provides the following regarding conditional use permits at 30.42.100 Decision criteria – conditional use permit:

“(1) The hearing examiner may approve, approve with conditions, or deny a conditional use permit only when all the following criteria are met:

- (a) The proposal is consistent with the comprehensive plan;
- (b) The proposal complies with applicable requirements of this title;
- (c) The proposal will not be materially detrimental to uses or property in the immediate vicinity; and
- (d) The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.

9. The proposal as submitted and designed, and if conditioned as recommended in this report, is consistent with the comprehensive plan, complies with applicable requirements of this title, will not be materially detrimental to uses or property in the immediate vicinity, and is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.
10. The Department of Public Works reviewed the request with regard to traffic mitigation and road design standards. This review covered Title 13 SCC and Chapter 30.66B SCC (Title 26B SCC) as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, and dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads, and Transportation Demand Management. As a result of that review, the Department of Public Works has determined that the development is concurrent and has no objection to the requests subject to various conditions.
11. The Department of Planning and Development Services Engineering Division has reviewed the concept of the proposed grading and drainage and recommends approval of the project subject to conditions, which would be imposed during full detailed drainage plan review pursuant to Chapter 30.63A SCC (Title 24 SCC).
12. Wetlands exist in several locations on the school site, and they will be impacted to varying degrees by the construction of the schools. The district has provided the Sensitive Areas Study (Exhibit 22), done by The Watershed Company. The Examiner concurs with the conclusions in the study and imposes conditions implementing those conclusions.
13. The request is consistent with Section 30.70.100 SCC (Section 32.50.100 SCC), which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP, and GMA-based county codes.
14. The request is consistent with the decision criteria applicable to a variance at SCC 30.43B.100 and meets the intent of the landscape requirements at SCC 30.25.020.
15. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition. There are no changes to the recommendations of the staff report.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.
3. The request is consistent with the GMACP, GMA-based County codes, and the type and character of land use permitted on the site by the applicable design and development standards.
4. The request should be approved subject to compliance by the applicant with the following preconditions and conditions:

PRECONDITIONS

- A. A record of the developer's Chapter 30.66B SCC mitigation obligations shall have been recorded with the County Auditor.
- B. The official site plan (Exhibit 26) shall have been revised to show a right-in only access.

CONDITIONS

- A. The site plan(s) marked Exhibits 5A through 5L, Exhibits 5N through 5AJ, and the conditional use permit Overall Site Plan (Exhibit 26, as revised pursuant to Pre-Condition B), shall be the official approved development plans for this project. Any discrepancy between the content of the official approved development plans and the performance standards of the UDC SCC shall be resolved in favor of the standards contained within the UDC SCC. Revision of official approved development plans is regulated by SCC 30.42C.110.
- B. This conditional use permit is approved for the construction and operation of an elementary school and a high school to consist of the buildings and improvements as shown on the approved site plans.
- C. Lighting for the athletic fields shall shielded to avoid casting glare on nearby properties.
- D. The proposed northerly access will be restricted to right-in only access, unless a second full signalized access is approved by Department of Public Works during building permit approval. If the applicant modifies the location of parking and vehicular circulation on the site to the satisfaction of the Department of Public Works, the northerly access may be approved as right-in right-out only during building permit approval.

- E. Prior to issuance of a grading permit:
- i. A Critical Areas Site Plan (CASP) shall be recorded with the county auditor for critical areas and buffers that lie within a Native Growth Protection Area (NGPA). The following NGPA restrictive language shall be reflected on the CASP: "All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees."
 - ii. A Final Mitigation Plan shall be submitted for review and approval during the construction review phase of this project, based on the September 19, 2005 Sensitive Areas Study by The Watershed Company.
- F. Prior to the commencement of any earthwork on the site:
- i. The applicant shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
- G. Prior to issuance of any building permit(s):
- i. A traffic impact mitigation fee of \$11,769.00 shall have been paid to the Washington State Department of Transportation.
 - ii. A traffic impact mitigation fee of \$7,968.00 shall have been paid to the City of Mill Creek.
- H. Prior to issuance of a building permit for the elementary school:
- i. A traffic impact mitigation fee of \$147,550.20 shall be paid.
- I. Prior to issuance of a building permit for the high school:
- i. A traffic impact mitigation fee of \$392,350.05 shall be paid.
- J. Prior to the issuance of the any Certificate of Occupancy for the first school completed:
- i. A traffic signal shall be installed at the intersection of the new public road and Cathcart Way, and accepted by the Department of Public Works.
 - ii. The TDM plan shall have been fully constructed and implemented.
 - iii. The access road shall be constructed, approved, and deeded to the County utilizing the road establishment procedures.
 - iv. Additional right-of-way required to add the turn lanes at the new signalized intersection for the access road through the school site, and for the additional right-of-way that is tangent to the ultimate right-of-way on Cathcart Way and the public road through the school site with a 35 foot radius curve, shall have been deeded to the County.

- K. Prior to issuance of a Certificate of Occupancy for the high school:
- i. Native Growth Protection Area boundaries (NGPA) shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The applicant may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.
 - ii. NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to Planning and Development Services for review and approval prior to installation.
 - iii. The Final Wetland Mitigation Plan shall have been satisfactorily implemented.
- L. Nothing in the permit/approval shall excuse the applicant, owner, lessee, agent, successor or assigns from full compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project. In particular, no clearing, grading, filling, construction or other physical alteration of the site may be undertaken prior to the issuance of the necessary permits for such activities.
5. Any conclusion in this report and decision which should be deemed a finding of fact is hereby adopted as such.

DECISION

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The requests for a conditional use permit, height variance and landscape modification for the construction of a new elementary school and a new high school are hereby **CONDITIONALLY APPROVED, SUBJECT TO COMPLIANCE** with the **PRECONDITIONS** and **CONDITIONS** set forth in Conclusion 4, above.

Decision issued this 1st day of November, 2005.

Ed Good, Deputy Hearing Examiner

EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

Reconsideration

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **November 11, 2005**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

Appeal

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with

the Department of Planning and Development Services, 2nd Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **November 15, 2005** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by the department. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

Staff Distribution:

Department of Planning and Development Services: Tom Barnett
Department of Public Works: Norm Stone

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.
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This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than NOVEMBER 1, 2006.

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
 - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
 - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant Decision is effective as of _____, _____.

Certified by:

(Name)

(Title)
